

HON'BLE SRI JUSTICE A. SHANKAR NARAYANA

CRIMINAL REVISION CASE No.1437 OF 2006

JUDGMENT:

The complainant filed a complaint in S.R. No.6776 of 2005 before the learned Chief Metropolitan Magistrate at Hyderabad, and the same was dismissed at S.R. stage on 09.06.2006. Therefore, he preferred the present Criminal Revision Case under Sections 397 and 401 of the Code of Criminal Procedure, 1973 (for short 'Code') as party-in-person.

2. He arraigned as many as 18 accused in the aforesaid complaint and, in fact, mentioned that the case against accused Nos.17 and 18 since died, they are not necessary parties. He alleged the offences punishable under Sections 109, 120, 153-A, 171, 193, 209, 392, 420, 468, 406, 454, 477-A and 506 IPC against the accused. The learned Chief Metropolitan Magistrate, by his order, dated 09.06.2006, found from the sworn statement of the revision petitioner - complainant that the complainant failed to make out a case against the accused persons and dismissed the complaint under Section 203 of the Code.

3. The Criminal Revision Case was admitted on 11.12.2007 and, later it was listed 21.11.2017. There was no representation for the party-in-person, hence, the Registry was directed to list on 24.11.2017 under the caption 'for orders'. Even, on 24.11.2017, the

party-in-person was not present, hence, observing that to afford yet another opportunity to him, directed the Registry to list it today (i.e., 04.12.2017). Today also, when called at 10.30 a.m., the party-in-person was not present. The case was passed over to call at 1.00 p.m. Even, at 1.00 p.m., the revision petitioner is not present.

4. The learned Magistrate recorded the sworn statement of the complainant and recorded it running into seven pages with the events starting from 1974 onwards, when the party-in-person was Honorary Secretary of 'Sree Vardhaman Sthanak Wasi Jain Srawak Sangh', a registered society under serial No.185 of 1974, and he is the life member of the said society and even accused Nos.1 to 5 were also the life members.

5. The grievance expressed by the complainant was after his period was over, the life members and other members of the society formed a new society clandestinely in the name of 'Sree Vardhaman Sath Nakwasi Jain Sarawak Sangh'. The learned Magistrate opined that the complainant ought to have approached the Civil Court for redressal of his grievance in order to get the relief or to prevent misappropriation or the acts of accused persons and opined that it is purely civil in nature. The learned Magistrate observed that the clandestine activities or the alleged misappropriation of funds by accused Nos.1 to 8, 17 and 18 spoken to by the party-in-person though, attributed to the new society, still, he asserted in the chief-

examination the name of the old society as 'Sri Vardhaman Sthanakwasi Jain Srawak Sangh'. Certain other instances were also referred to by the learned Magistrate and ultimately found that the funds received by accused No.9 were kept in fixed deposit in the name of District Educational Officer so far as the amounts derived from K.G and Primary School were concerned and the rest of the things in the order would speak thus:

“ So, subsequently, A9 stepped down from Office delivered original FDR deposit receipt along with a covering letter of State Bank of Hyderabad to pay the said amount in favour of the petitioner. But when he was went for en-cashing the said FDR receipt As it was in the name of D.E.O., the en-casement was not made. Then, he again approached the A9 and he suggested that he will get done, through new society. But that was not materialized and matter was time to time was post-phoned and the FDR is lying with A4 and A5 and other accused who promised to return the same. So, considering these factual aspects, the alleged amount is lying in FDR in the name of society nor the accused persons en-cashed the said FDR and mis-appropriated the amount for their personal gain. So, the allegations and sworn statement contents clearly shows that FDR is still with society. The society is consisting of accused and other persons. So, in any point of view that it cannot be made out that the accused persons intentionally not given clearance letter to en-cash the FDR and mis-appropriated the fund is not made out through the statement of complainant. Further, he contended that Sri Navarathmal Kotecha and Sri Swaroop Chand Kotari cheated themselves as President and Secretary of the society holding the office from the last two years and given

a publication on 04.01.2000 for holding fresh elections on 26-01-2006. But they have not conducted any elections and cheated the public. So, these allegations could give raise to civil dispute but not criminal complaint against the accused persons. Further, here the complainant alleged that the offence under sections 109, 120, 153-A, 171, 193, 209, 392, 420, 468, 406, 454, 477-A and Sec.506 IPC. But all these alleged offences are not made out from the sworn statement contents of the complainant.”

6. When such serious allegations have been alleged by the complainant, he ought to have shown the list of witnesses which is not finding place in the copy of the complaint placed in the record, and the description of the documents, on the basis of which he has levelled the allegations. Thus, not only the complaint is not in conformity with the rules of procedure, but the consolidated sworn statement of the complainant, certainly, would not make out any *prima facie* case as rightly observed by the learned Magistrate. Therefore, there is no infirmity, much less any legal infirmity, in the order rejecting the complaint at S.R. stage by the learned Magistrate.

7. The present Criminal Revision Case is without any merit and, therefore, the same is dismissed,

As a sequel thereto, miscellaneous petitions, if any, pending in the present revision, stand closed.

A. SHANKAR NARAYANA, J

December 04, 2017.

Mgr